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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91191056
Party	Plaintiff White Rock Distilleries, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**IN THE MATTER OF APPLICATION**

Mark: PINNACLES RANCHES  
Applicant: Franciscan Vineyards, Inc.  
Serial No.: 77/598,674  
Published in  
the **Official Gazette**: March 17, 2009

WHITE ROCK DISTILLERIES, INC.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91191056
	)	
FRANCISCAN VINEYARDS, INC.,	)	
	)	
Applicant.	)	
_____	)	

**OPPOSER WHITE ROCK DISTILLERIES, INC.’S  
OPPOSITION TO APPLICANT’S MOTION TO STRIKE**

In Applicant’s Motion to Strike, Exclude, and/or Limit Certain of Opposer’s Proffered Evidence (“Applicant’s Motion”), Applicant Franciscan Vineyards, Inc. (“Applicant”) has objected to the admissibility of certain evidence proffered by Opposer White Rock Distilleries, Inc. (“White Rock”) and has challenged the qualifications of White Rock’s expert witness. White Rock responds to pertinent portions of Applicant’s Motion below:

A.     Applicant’s Objections to White Rock’s Notice of  
          Reliance on Printed Publications Are Unfounded

Applicant has moved to strike, in part, and/or limit the probative value of White Rock’s Notice of Reliance on Printed Publications (Docket Entry No. #24) (hereinafter “NOR Printed Pubs) on the following grounds articulated by Applicant: (1) a needless presentation of cumulative evidence and that White Rock is relying on them for the truth of the matters contained therein; (2) documents in the nature of web site printouts identifying the existence and

locations of the Pinnacles National Monument, Pinnacles Ranch Airport and Pinnacles High School are “unreliable”; and (3) relevance. While Applicant has attempted to strike or limit the probative value of documents contained in NOR Printed Pubs by raising an array of objections against them, none of these objections are credible.

- (1) Internet Materials Were Submitted To Show Public Mentions of The Term “Pinnacles Ranch” As An Actual Location Near – And Unrelated to – Applicant’s Winery

White Rock submitted numerous printed publications from Internet sources to demonstrate that there is ample evidence confirming that the area in and around Applicant’s ESTANCIA winery is referred to as the “Pinnacles” and that an area near the eastern portion of the Pinnacles National Monument has long been called “Pinnacles Ranch.” The various printed publications were also submitted to show that the term “Pinnacles,” shared by nearby “Pinnacles National Monument,” “Pinnacles Ranch Airport” and “Pinnacles High School,” has a readily understood and well-known meaning and that it has been adopted by third parties to express that such places are located in and around the “Pinnacles.” As such, the printed publications contained in NOR Printed Pubs demonstrate public exposure to the geographic significance of the terms “Pinnacles Ranch” and “Pinnacles” as used to denote the region near the “Pinnacles Ranches” where the grapes for certain of Applicant’s ESTANCIA wines are grown.

- (2) The Numerous Printed Publications Regarding the Pinnacles National Monument and the Pinnacles Ranch Airport Are Probative and Admissible

In an attempt to explain away the numerous documents referring to or identifying the existence and location of the Pinnacles National Monument, the Pinnacles Ranch Airport and Pinnacles High School, Applicant argues that web site printouts are “unreliable.” As explained above, White Rock introduced printed publications about the Pinnacles National Monument and the Pinnacles Ranch Airport to demonstrate public exposure to the geographic names of these

locations, which are all in close proximity to Applicant's winery. The probative value of such documents pertaining to the existence and the locations of the Pinnacles National Monument and the Pinnacles Ranch Airport is demonstrated not only by the testimony of White Rock's witnesses but by Applicant's own witnesses corroborating the information appearing on the documents.

Further, it should be noted that, notwithstanding Applicant's half-hearted complaints about the "reliability" of online information confirming amply the existence of the Pinnacles Ranch Airport, the authoritative Geographic Names Information System ("GNIS") maintained by the United States Geological Survey in the Department of the Interior ("USGS"), a federal agency that (among other things) produces maps, identifies and has a separate listing for the Pinnacles Ranch Airport. *See* White Rock NOR Pr. Pub. at 23-24 (WRDOpp20003-20004). Further, the USGS web site, as well as multiple other web sites featuring geographic reference information display the location of a "Pinnacles Ranch" and surrounding areas, including but not limited to Pinnacles Wilderness and the Pinnacles Campground. White Rock NOR Pr. Pub. at 8. As such, the documents contained in White Rock's NOR Printed Pubs are highly probative.

(3)     The Documents are Highly Relevant to Show  
          the Weakness of Applicant's "Pinnacles Ranches" Mark

In another attempt to divert attention from inescapable reality, Applicant objects that the documents in White Rock's NOR Printed Pubs are irrelevant because documents about the existence and locations of the Pinnacles National Monument and the Pinnacles Ranch Airport have "nothing to do with wines, vineyards or wineries" and that Applicant "does not use the term 'Monument' or 'National' or 'airport' or 'High School' on its wines and nothing on Applicant's products (i.e., labels, capsules, corks, etc.) makes any reference to the Pinnacles National Monument, or Pinnacles Ranches Airport, or Pinnacles High School." Applicant's Motion at 4-5.

White Rock introduced printed publications regarding the Pinnacles National Monument and the Pinnacles Ranch Airport to show that the purported mark “Pinnacles Ranches” is likely to be perceived in light of the location of Applicant’s winery and the surrounding areas known to the public as “Pinnacles.” Furthermore, many of Applicant’s marketing materials show the location of the Pinnacles National Monument and its proximity in relation to Applicant’s winery.

B. White Rock’s Expert Witness Paul Reidl is a Qualified Wine Industry Expert

White Rock retained Paul Reidl as a wine industry expert to provide his expertise regarding the nature in which the terms “Pinnacles” and “Pinnacles Ranches” have been used by Applicant for wine and other alcoholic beverage labeling and marketing-related issues. Fed. R. Evid. 702 provides that if “specialized knowledge” will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert “by knowledge, skill, experience, training or education” may testify thereto. Fed. R. Evid. 702. Here, Applicant has disputed White Rock’s expert witness Paul Reidl’s qualifications as an expert and that his testimony and expert report are biased and/or flawed. However, Mr. Reidl’s background and experience make clear that Applicant’s challenges to Mr. Reidl’s qualifications as an expert are unfounded.

Mr. Reidl’s expertise on the U.S. wine industry is sufficiently established in his trial testimony and in his expert report. As stated therein, for nearly 18 years, at E. & J. Gallo Winery (“Gallo”) in Modesto, California, Mr. Reidl had not only a legal role as in-house counsel but also substantive business input regarding Gallo’s branding, labeling, and packaging decision-making and worked closely with the Marketing Department and various Business Units on brand development and strategy. Rule 26 Disclosure Statement and Declaration of Paul W. Reidl (“Reidl Report”) at 11:20-16:11; testimony of Paul W. Reidl (hereinafter “Reidl Dep.”), at 16:9-

20; Reidl Dep. Ex. 4 . During his tenure at Gallo, Mr. Reidl reviewed and approved thousands of wine labels proposed and used by Gallo both from a trademark and regulatory compliance perspective. Reidl Dep. at 16:18-18:18. Mr. Reidl has longstanding insider familiarity with the wine industry, reads extensively in the field, has frequently visited retail outlets where wines are sold, and throughout his long career, has reviewed and approved thousands of wine labels and regularly reviewed and approved advertising, brand plans and promotional materials for wines. Reidl Report at 17:1-3; Reidl Dep. at 26:10-19. Further, Mr. Reidl served as the President and Chairman of the Board of the International Trademark Association (“INTA”) and advocated on behalf of wine and alcoholic beverage producing members of INTA with respect to registration of geographic indications in the USPTO. Reidl Report at 19:15-24; Reidl Dec. at 73:9-75:7. Mr. Reidl has also written and spoken extensively regarding the wine industry. Reidl Report at 17:7-19:14. In view of his background and experience, Mr. Reidl certainly qualifies as a wine industry expert.<sup>1</sup>

White Rock responds to specific objections made by Applicant below with respect to Mr. Reidl’s qualifications as an expert:

- While Applicant objects to Mr. Reidl’s background and experience and cites random excerpts from his testimony deposition, *see* Applicant’s Motion at 8-10, as stated above, Mr. Reidl qualifies as a wine industry expert based on his experience in handling marketing, advertising, labeling, and related legal issues at a major winery for 18 years. Further, although Applicant objects to Mr. Reidl’s testimony as being unreliable and biased, it has not presented any support for its contentions. *See* Applicant’s Motion at 10. Mr. Reidl’s opinions and testimony were based on his knowledge and experience in the wine industry and applying that knowledge in

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<sup>1</sup> *See Corporacion Habanos, S.A. v. Annas, Inc.*, 88 U.S.P.Q.2d 1785 (T.T.A.B. 2008) (finding opposer’s witness to be qualified as an expert on cigars based on his background and experience); *Capital Project Management, Inc. v. IMDISI, Inc.*, 70 U.S.P.Q.2d 1172 (T.T.A.B. 2003) (finding opposer’s expert witnesses to qualify as experts in the construction management field based on professional accomplishments and overall experience).

reviewing the facts of the case, Applicant's advertising and marketing materials and non-confidential documents in this case.

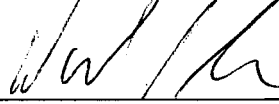
- Applicant presents charts to compare Mr. Reidl's testimony to its own evidence – consisting of testimony of Applicant's non-expert witnesses – to demonstrate that Mr. Reidl's testimony is flawed and/or biased. *See* Applicant's Motion at 10-14. While White Rock proffered Mr. Reidl as an expert with specialized knowledge regarding the wine industry, Applicant merely attempts to rebut Mr. Reidl's expert testimony and opinion through a marketing person from its parent company and a non-party photographer -- who happens to be the brother of Applicant's counsel. Testimony by such individuals should not be given much weight as Applicant failed to produce a rebuttal expert.
- Applicant takes issue with Mr. Reidl's testimony that the term "Ranches" is commonly used for wines by offering Mr. Guggino's testimony stating the opposite premise. *See* Applicant's Motion at 14-15. However, Mr. Guggino's testimony that the term "Ranches" is not commonly used is based largely on a cursory TESS search for the term "Ranches" that was conducted at the direction of counsel. Testimony of Jon E. Guggino (hereinafter "Guggino Dep.") at 33:24-35:3.
- Applicant states that "Applicant's use of the term 'Ranches' (i.e., in the plural) is fairly unique in the industry" based solely on TESS and COLA search results for the term "ranches." *See* Applicant's Motion at 15. Such blanket statement should be given no probative value, particularly in view of Applicant's disclaimer of the term "Ranches" in its trademark application Serial No. 77/598,674 for "Pinnacles Ranches."
- Applicant objects that Mr. Reidl's testimony concerning the absence of the term PINNACLES from Applicant's wine labels based on his review of COLA abstracts is flawed. *See* Applicant's Motion at 15. Such statement is wrong since COLA abstracts display the actual wine labels. As Mr. Reidl correctly testified, since 1996, all uses of the term "Pinnacles" have been in conjunction with the primary Brand Name ESTANCIA. Reidl Report at 9:6-11; 9:14-18.

- Applicant points out Mr. Reidl’s alleged bias based on his testimony regarding the use of grape varietal names as “fanciful names” on COLA applications. *See* Applicant’s Motion at 17. Applicant provides no explanation as to how Mr. Reidl’s testimony concerning use of grape varietal names as “fanciful names” leads to the conclusion that Mr. Reidl is biased. In addition, such objection is irrelevant to any of the issues in this proceeding.
- Applicant discusses at length the 1991 amendment of Reg. No. 997,378 from “Pinnacle” to “Pinnacles.” However, no issue in this proceeding is impacted in any way by prior forms of a different mark used by Applicant’s predecessor in interest in the 1970s. For well over a decade (by its own admission) Applicant has only used the term “Pinnacles” in conjunction with its ESTANCIA-brand wines. There is no document in the record supporting Applicant’s half-hearted contention that any use by it of the term “Pinnacles Ranches” or even the term “Pinnacles” actually connotes or is even intended to connote “top” or “peak.”
- Applicant’s so-called third party examples of “pinnacles formations found throughout the world” is irrelevant. *See* Applicant’s Motion at 19. None of the third party examples – many of them outside the U.S. – contained any references to “pinnacles ranch” or “pinnacles ranches”. As such, there is no “flawed methodology” or “bias” in Mr. Reidl’s opinion regarding consumer perception and geographic significance of “Pinnacles Ranches.”
- Applicant further alleges bias on Mr. Reidl’s part by introducing a trademark prosecution file of an unrelated mark owned by Gallo. *See* Applicant’s Motion at 19. Specifically, Applicant tries to equate arguments made by Gallo at the time in arguing against a 2(a) TRIPS claims with evidence submitted by Applicant in the instant proceeding. Mr. Reidl did not answer many of Applicant’s leading questions pertaining to the trademark file based on attorney-client privilege. None of the responses given by Mr. Reidl or identified by Applicant demonstrated the alleged flawed methodology and bias by Mr. Reidl in evaluating the strength of Applicant’s marks based upon his extensive wine industry experience.



Based on the foregoing, White Rock respectfully requests that the Board overrule the objections set forth in Applicant's Motion.

Respectfully submitted,



Dated: August 1, 2011

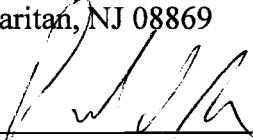
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CERTIFICATE OF SERVICE

Date: August 1, 2011

The undersigned hereby certifies that a true and correct copy of the foregoing Opposer White Rock Distilleries, Inc.'s Opposition to Applicant's Motion to Strike has been served by first class mail, postage prepaid, this 1st day of August 2011 upon Franciscan Vineyards, Inc. at the following correspondence address of its counsel of record:

John M. Rannells, Esq.  
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Daniel I. Schloss